S.B. Civil Writ Petition NO.2247/2003

Durg Singh Vs. State of Rajasthan & Ors.

Date of Order : 06-12-2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Kuldeep Mathur, for the petitioner.
Mr. L.R. Upadhyay, for the respondents.

Heard learned counsel for the parties.

Brief facts of the case are that the petitioner was initially appointed on the post of Blaster by order dated 28.6.1969 as temporary employee but his services continued and he was declared surplus by order dated 29.4.1978 (Annex.2) and he was sent for absorption in another department. The petitioner was absorbed as Motor Vehicle Inspector vide order dated 26.12.1987. The petitioner sought benefit of the selection grade on completion of services for 9, 18 and 27 years in pursuance of the order of State Government dated 25.1.1992 which provides that the employees who could not get the service benefits and were facing the stagnancy will be given benefit on completion of 9, 18 and 27 years. It was provided in Clause (3) of the circular dated 25.1.1992 that the employees shall be entitled to benefit of the selection

grade from the date of their first appointment. For employees, who were declared surplus were also given benefit of selection grade. As per third proviso to Clause (3), surplus employees are made entitled to get benefit on completion of service of 9, 18 and 27 years-

(1) from the date when any of his junior completes the period of the qualifying service.
(2) or on completion of service from the date of appointment to the post held before the absorption whichever is later.

The petitioner submitted several representations to the respondents for grant of benefit of the selection grade in pursuance of the order dated 25.1.1992 and he was given benefit vide order dated 6.2.2002. By this order dated 16.11.2002 (Annex.6), the petitioner was given benefit of one selection grade only by counting the petitioner's services from 1986 when the petitioner was absorbed as a Motor Vehicle Inspector vide order dated 26.12.1986 (Annex.4).

According to learned counsel for the petitioner, the petitioner was entitled for the selection grade from his initial date of appointment in view of the proviso third of Clause (3) of Government order dated 25.1.1992.

Learned counsel for the respondents submitted that petitioner was given benefit of selection grade as he was absorbed on the post of Motor Vehicle Inspector vide order dated 26.12.1987 and, therefore, his services can be counted from the year 1986 only and not from any earlier date.

I considered the submissions of learned counsel for the parties and perused the circular dated 25.1.1992.

The Clause (3) of the Government order dated 25.1.1992 is as under:-

> "The service of nine, eighteen or twenty seven years, as the case may be, shall be counted from the date of first appointment in the existing cadre/service in accordance with the provisions contained in the Recruitment Rules;
>
> Provided that if an employee subsequent to his first appointment to a post in a cadre/service, as a result of direct recruitment, is appointed to some other post in the same cadre or any other cadre, service from the date of latter appointment shall be taken into consideration for the purpose of grant of Selection Grade;
>
> Provided further that if an employee subsequent to his first appointment to a post in a cadre/service, in accordance with provisions contained in the relevant Service Rules, is promoted to a post in some other cadre, service from the date of such promotion shall be taken into consideration for the purpose of grant of the Selection Grade;
>
> Provided further that in the case of an employee who is declared surplus and

> absorbed against a new post, the service of nine, eighteen or twenty seven years, as the case may be, shall be deemed to have been completed on the date on which his immediately junior employee completes that period of service or on completion of service from the date of appointment to the post held before absorption, whichever is later."

A bare perusal of the above order, it is clear that the petitioner was entitled for the selection grade as he was the employee who completed the requisite years of service. The petitioner's entitlement for the selection grade is not in dispute as the respondents themselves have allowed the selection grade to the petitioner vide order dated 16.11.2002 (Annex.6).

The question before this Court is that whether petitioner is entitled to benefit of the selection grade in pursuance of the order dated 25.1.1992 from the date of his initial appointment in the service or from date of his absorption in the department where he was absorbed.

The provision makes it very clear that the employees declared surplus and absorbed against a new post shall be deemed to have been completed services of 9, 18 and 27 years as the case may be on the date on which his immediate junior employee completes that period of service. Here in this case, the respondent has not come with this case that the petitioner's immediate junior completed 8 years' of service only in the year 1986. In view of the

other contingency made in third proviso referred above, the petitioner' service is required to be counted from the date of his appointment to the post which he held before his absorption. Therefore, in view of the clear provision made in the order dated 25.1.1992, the petitioner was entitled for the selection grade by counting his service from his initial appointment and not from the date when he was absorbed by department after his being declared surplus.

In view of the above, the writ petition deserves to be allowed, hence allowed. The order dated 16.11.2002 allowing the petitioner's grade by treating his service from the year 1986 is set aside. It is held that petitioner is entitled for the selection grade from date of his initial appointment i.e. 28.6.1969.

The respondents are directed to pass an appropriate order of giving the benefits to the petitioner treating him entitled to the benefit of counting his service from 28.6.1969. The appropriate order may be passed within a period of eight weeks from today.

[PRAKASH TATIA],J.

Praveen